

REMARKS

In the Office Action dated November 1, 2005, claims 1, 2, 4, 5, 7, 8, 9 and 12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Valley in view of Klass. Claim 16 was rejected under 35 U.S.C. §103(a) as being unpatentable over Valley and Klass, further in view of Ingalls. Claims 6 and 10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Valley and Klass, further in view of Loftus et al. Claim 11 was rejected under 35 U.S.C. §103(a) as being unpatentable over Valley and Klass, further in view of Murphy et al. Claims 13, 15 and 19 were rejected under 35 U.S.C. §103(a) as being unpatentable over Loftus et al. in view of Murphy et al. claims 16 and 20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Loftus et al. and Murphy et al., further in view of Ingalls. Claims 17 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Loftus et al. and Murphy et al., further in view of Kettl et al.

Applicant notes with appreciation the interview courteously afforded the undersigned counsel for the Applicant on January 25, 2006. At the interview, the rejection of claim 1 based on the teachings of Valley and Klass was discussed, however, it was understood that this discussion was applicable to the rejections of other claims depending from claim 1, wherein additional secondary references were relied upon.

Moreover, for the reasons discussed below, Applicant submits that this discussion is applicable to the rejection of the method claims, since independent method claim 13 has been amended to include limitations comparable to those in independent claims 1 and 8.

At the interview, the undersigned counsel for the Applicant explained that the Valley reference is directed to a microphone assembly suitable for a face mask that is to be used by persons working in contaminated or hazardous atmospheres, and therefore the facemask in the Valley reference is, and must be, composed of relatively strong, rigid material, and thus whatever teachings are present in the Valley reference would not be applicable to a surgical mask or a neckband. It is questionable whether the facemask in the Valley reference would even be considered a "garment," in accordance with the normally understood meaning of that word. Moreover, at column 1, lines 59-67, it is explicitly stated that the microphone assembly is adhesively attachable to the facemask.

The Klass reference is directed to a hospital garment (gown) that has a pocket therein that is located so as to surround the hips of a patient when the garment is being worn. Bubble plastic material can be inserted into the pocket to provide protection to the hips of a patient wearing the garment.

Clearly, the garment disclosed in the Klass reference is not intended to be worn at a region where the inclusion of a microphone in the pocket thereof would be of any benefit or utility. In fact, moving the pocket in the Klass reference to a location away from the hips, or using the pocket in the Klass reference for some other purpose, would destroy the intended purpose of the Klass reference. Realizing this, a person of ordinary skill in the field of designing garments selected from the group consisting of surgical masks and neckbands would have no reason to even consult the Klass reference, and would have even less reason to consider modifying the rigid facemask disclosed in the Valley reference in accordance with any teaching in the

Klass reference, in view of the explicit teaching in the Valley reference to adhesively attach the microphone to the facemask.

In view of the necessarily rigid construction of the facemask disclosed in the Valley reference, it does not even make sense to consider the use of some type of "pocket" therein. It is not readily apparent how a pocket could even be incorporated in the rigid structure of the Valley reference.

For these reasons, Applicant submits that it would not have been obvious to a person of ordinary skill in the relevant field to modify the Valley reference in accordance with the teachings of Klass in order to arrive at the subject matter of either of independent claims 1 or 8.

Moreover, in view of the non-obviousness of the subject matter of independent claims 1 and 8 based on the teachings of Valley and Klass, Applicant submits that none of the dependent claims depending respectively from those independent claims would have been obvious in view of the teachings of those references, even if augmented with any of the other secondary references cited by the Examiner.

As to independent method claim 13, that claim has been amended to include limitations comparable to those that were already present in independent claims 1 and 8. The Loftus et al. reference does not disclose or suggest incorporating a microphone in the pocket of a garment, as now set forth in independent claim 13, and the Murphy et al. reference has no relevancy to that claim limitation. Claim 13 and the claims depending therefrom, therefore, are submitted to be allowable over the art of record for the same reasons discussed above in connection with claims 1 and 8.

At the interview, the Examiner acknowledged these arguments, but stated that the term "garment" used in the claims did not necessarily preclude, in the opinion of the Examiner, reliance on a reference such as the Valley reference. At the interview, therefore, the Examiner suggested defining the garment in the claims as being a fabric garment. Applicant does not object to making this change in the claims, and therefore the word "garment" at each location in the claims has been modified to describe the garment as being a "fabric garment."

Applicant respectfully submits that adding this limitation in the claims does not raise a new issue requiring further searching or consideration, because the commonly understood meaning of the word "garment" is an article of clothing, and this inherently implies or includes that a garment will be made of some type of fabric, or at least have a fabric base. A copy of the definition of "garment" from *Webster's Ninth New Collegiate Dictionary* is attached hereto in substantiation of this position.

At the interview, the Examiner agreed that adding this limitation would overcome the rejection based on the prior art (at least as to the explicitly-discussed Valley and Klass references). Applicant respectfully submits that by adding this limitation to all of the claims, all of the rejection have been overcome, and further submit that making this change does not raise a new issue requiring further

searching or consideration. Entry of the present Amendment at this stage of prosecution, following the final rejection, is therefore proper, and the same is respectfully requested.

Submitted by,

Steven H. Nolch (Reg. 28,982)

SCHIFF, HARDIN LLP
CUSTOMER NO. 26574
Patent Department
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
Telephone: 312/258-5790
Attorneys for Applicant.

CH1\4453458.1



WEBSTER'S
Ninth New
Collegiate
Dictionary

**A GENUINE MERRIAM-WEBSTER**

The name Webster alone is no guarantee of excellence. It is used by a number of publishers and may serve mainly to mislead an unwary buyer.

A *Merriam-Webster®* is the registered trademark you should look for when you consider the purchase of dictionaries or other fine reference books. It carries the reputation of a company that has been publishing since 1833 and is your assurance of quality and authority.

Copyright © 1987 by Merriam-Webster Inc.

Philippines Copyright 1987 by Merriam-Webster Inc.

Library of Congress Cataloging in Publication Data
Main entry under title:

Webster's ninth new collegiate dictionary.

Based on Webster's third new international dictionary.

Includes index.

1. English language—Dictionaries. I. Merriam-Webster Inc.

PE1628.W5638 1987 423 86-23801

ISBN 0-87779-508-8

ISBN 0-87779-509-6 (indexed)

ISBN 0-87779-510-X (deluxe)

Webster's Ninth New Collegiate Dictionary principal copyright 1983

COLLEGIATE trademark Reg. U.S. Pat. Off.

All rights reserved. No part of this book covered by the copyright herein may be reproduced or copied in any form or by any means—graphic, electronic, or mechanical, including photocopying, taping, or information storage and retrieval systems—without written permission of the publisher.

Made in the United States of America

2526RMcN87

506 garble • gas

**This Page is Inserted by IFW Indexing and Scanning
Operations and is not part of the Official Record**

BEST AVAILABLE IMAGES

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- BLACK BORDERS**
- IMAGE CUT OFF AT TOP, BOTTOM OR SIDES**
- FADED TEXT OR DRAWING**
- BLURRED OR ILLEGIBLE TEXT OR DRAWING**
- SKEWED/SLANTED IMAGES**
- COLOR OR BLACK AND WHITE PHOTOGRAPHS**
- GRAY SCALE DOCUMENTS**
- LINES OR MARKS ON ORIGINAL DOCUMENT**
- REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY**
- OTHER:** _____

IMAGES ARE BEST AVAILABLE COPY.

As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.